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ARA-LA/BR - MR. BALLANTYNE (DRAFT

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

INFO AMCONSUL RIO DE JANEIRO IMMEDIATE

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E.O. 11652: N/A

TAGS: TECH, ENRG, BR

SUBJECT: AEC ENRICHMENT CONTRACTING

REF : A) BRASILIA 5929, 5972, 5999, 6000 AND 6001;

B) STATE 169743; (C) STATE 169744

1. BRAZILIAN REACTION TO SITUATION ON URANIUM ENRICHMENT CONTRACTING APPEARS BASED ON GOB UNCERTAINTY CREATED BY DIFFERENTIATION BETWEEN CONDITIONAL AND STANDARD CONTRACTS AND MISREADING OF U.S. ASSURANCES WE WOULD MEET OUR COMMITMENTS.

2. THE KEY SENTENCE OF THE PRESIDENT'S ASSURANCE CONCERNING CONDITIONAL CONTRACTS, REF C, READS: "THE PRESIDENT ASSURES HOLDERS OF CONDITIONAL CONTRACTS THAT THE UNITED STATES WILL, IN ANY EVENT, FULFILL THE FUEL REQUIREMENTS IN THOSE CONTRACTS FROM U.S. SUPPLY SOURCES." IN UNDERLINING THE IMPORTANCE OF THIS ASSURANCE, EMBASSY SHOULD STRESS TO BRAZILIANS THAT THIS MEANS THE USG STANDS BEHIND THE FULFILLMENT OF CONDITIONAL CONTRACTS FROM U.S. SOURCES.

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IN ORDER OF PREFERENCE, THIS WOULD MEAN (1) FROM AEC IF

PLUTONIUM RECYCLE IS PERMITTED (REF B, PARA 4-B; (2) FAIL-
ING THIS, FROM PRIVATE U.S. SOURCES; OR (3) FAILING
THIS, FROM ADDITIONAL USG CAPACITY.

3. AMPLIFYING ON THESE POINTS, THE PRESIDENTIAL STATEMENT
REFERS TO "U.S. SUPPLY SOURCES", WHICH ARE NOT NECESSARILY

THOSE OF THE USG. WE ARE STRONGLY ENCOURAGING PRIVATE
INDUSTRY TO PROVIDE SUCH ADDITIONAL ENRICHING SERVICES.
THE PHRASE "IN ANY EVENT" SHOULD NOT REPEAT NOT BE
INTERPRETED AS MEANING "AT SOME TIME IN THE FUTURE," BUT
SHOULD BE INTERPRETED AS MEANING THAT ENRICHED URANIUM,
DESPITE "CONDITIONAL" NATURE OF CONTRACT, WILL BE SUPPLIED
BY U.S. SOURCES WHEN REPEAT WHEN REQUIRED FOR FOREIGN
REACTOR OPERATION. IN THIS REGARD, AEC CHAIRMAN RAY
TESTIFIED BEFORE THE JOINT COMMITTEE ON ATOMIC ENERGY ON
AUGUST 6, 1974, AS FOLLOWS: "IF PRIVATE ACTIONS ON
URANIUM ENRICHMENT DO NOT PROCEED OVER THE COURSE OF THE
NEXT YEAR IN ACCORDANCE WITH EXPECTATIONS, AEC WILL REVIEW
THE SSITUATION THEN--OR SOONER IF NECESSARY--AND
TAKE ANY NEEDED ACTIONS. AEC WILL TERMINATE ENTERING INTO
FURTHER LONG-TERM CONTRACTING FOR NUCLEAR POWER NEEDS.
THIS DOES NOT MEAN THAT SUCH FUTURE NEEDS WILL NOT BE MET.
THAT CANNOT BE ALLOWED TO HAPPEN. PRIVATE PLANS EXIST
WHICH CAN OVER THE COURSE OF THE COMING YEAR LEAD TO
COMMITMENTS TO NEW ENRICHMENT CAPACITY. GOVERNMENT PLANN-
ING CAN BE REVIEWED AT THE END OF THAT PERIOD SHOULD
PRIVATE ACTIONS NOT MATCH EXPECTATIONS."

4. THIS IS THE CONTEXT IN WHICH THE PRESIDENT'S ASSURANCE
SHOULD BE VIEWED. THE CONTRACTS ARE BEING MADE CONDI-
TIONAL BECAUSE BY LAW THE AEC CANNOT REPEAT NOT CONTRACT
BEYOND ITS EXISTING CAPACITY AND AEC CANNOT ASSUME APPROVAL
OF PLUTONIUM RECYCLE BEFORE IT ACTUALLY HAS OCCURRED. FOR
THIS SAME REASON, AEC IS UNABLE TO PROVIDE WRITTEN
ASSURANCES THAT MATERIAL WILL BE DELIVERED UNDER CONDI-
TIONAL FURNAS CONTRACTS. THE PRODUCTION CAPACITY TO BACK
UP THE PRESIDENTIAL ASSURANCE DOES NOT CURRENTLY EXIST,
BUT IT IS NOT NECESSARY THAT IT EXIST AT THIS TIME; THERE
IS A PERIOD OF ABOUT 12 TO 18 ADDITIONAL MONTHS BEFORE A
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FINAL DECISION NEEDS TO BE TAKEN TO CONTRACT SUCH CAPACITY
IF AN "ENRICHMENT GAP" (IN CONTRAST TO A "CONTRACTING
GAP") IS TO BE AVOIDED. FURTHER, AEC WILL HAVE A PREPRO-
DUCTION STOCKPILE OF UP TO 40 MILLION SEPARATIVE WORK
UNITS (EQUIVALENT TO ALMOST TWO YEARS PRODUCTION FROM ITS
STEADY STATE DIFFUSION PLANT CAPACITY) WHICH WILL BE IN
RESERVE TO MEET EMERGENCY SITUATIONS.

5. AEC DISCUSSIONS WITH BRAZILIANS IN MID-JUNE DID NOT REPEAT NOT INCLUDE SUBJECT OF AEC ENRICHMENT CAPACITY LIMITS, NOR WAS ANY UNANNOUNCED SUSPENSION OF CONTRACT-ING IN EFFECT AT THAT TIME- INABILITY OF AEC STAFF TO EXECUTE CONTRACT INVOLVED "CONDITION SUBSEQUENT" CONTRACT PROVISION UNDER WHICH CONTRACT IS TERMINATED UNLESS AMENDMENT TO U.S.-BRAZILIAN AGREEMENT FOR COOPERATION, CURRENTLY UNDER NEGOTIATION, IS IN FORCE BY SEPTEMBER 30,

1975. THIS PROVISION IS NECESSARY IN ORDER FOR AEC TO MEET STATUTORY REQUIREMENTS FOR DISTRIBUTION OF ENRICHED URANIUM UNDER CONTRACT. BRAZILIANS WERE CLEARLY TOLD FROM BEGINNING OF DISCUSSIONS THAT AEC STAFF COULD NOT YET EXECUTE ANY CONTRACTS WITH SUCH PROVISION (ALSO APPEARS IN SOME CONTRACTS WITH OTHER COUNTRIES) UNTIL COMMISSION'S FORMAL APPROVAL, IMMINENTLY EXPECTED, WAS OBTAINED. ALTERNATIVE WOULD HAVE BEEN TO DEFER CONTRACT NEGOTIATIONS UNTIL COMMISSION APPROVAL OF PROVISION COMPLETED.

6. SUBSEQUENT SUSPENSION OF CONTRACT EXECUTION BY AEC, AS ANNOUNCED IN FEDERAL REGISTER NOTICE OF JULY 2, 1974, PRIOR TO COMMISSION'S APPROVAL OF "CONDITION SUBSEQUENT" CLAUSE PREVENTED AEC SIGNING CONTRACTS UNTIL NOW. THERE WERE NO ABSOLUTE ASSURANCES OR COMMITMENTS OF ANY KIND GIVEN TO BRAZILIANS AND THE "CONDITION SUBSEQUENT" PROVISION IN CONTRACT WAS, ON SEVERAL OCCASIONS, CLEARLY IDENTIFIED AS BEING AD REFERENDUM AEC STAFF PROPOSAL.

7. IT MIGHT ALSO BE NOTED THAT HAD BRAZILIANS ACTED PROMPTLY ON AGREEMENT AMENDMENT WHEN FIRST PROPOSED BY USG, NEED FOR THIS PROVISION WOULD HAVE BEEN OBIATED AND CONTRACT COULD HAVE BEEN EXECUTED ON JUNE 19. FURTHER, LIMITED OFFICIAL USE

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FURNAS WAS ONE OF LAST OF OVERSEAS CUSTOMERS PROVIDING DATA NECESSARY TO PREPARE A CONTRACT (ON JUNE 12) AND THE CONTRACT ITSELF WAS COMPLETED IN ALMOST RECORD TIME ONCE THESE DATA WERE PROVIDED. EXPLANATORY LETTER TO FURNAS OFFERING CONDITIONAL CONTRACT WILL BE DISPATCHED SHORTLY. AS STANDARD CONTRACT NOT SIGNED, AEC IS RETURNING FURNA FIRST INSTALLMENT OF ADVANCED PAYMENT.

8. THE BRAZILIAN COMPLAINT THAT MEXICO MANAGED TO ACHIEVE PRIORITY BY BEING STUBBORN IS UNFOUNDED. THE BASIC PRINCIPAL FOR ESTABLISHING PRIORITY OF CONTRACTING, AS SPELLED OUT IN REF B, PARA 5-C, WAS CHRONOLOGY AND NO OTHER CONSIDERATION INFLUENCED THE RELATIVE STANDING OF BRAZIL AND MEXICO. AS FURTHER DETAILED IN REF B, PARA 5-C, THERE WAS SOME ARBITRARY SWAPPING BACK AND FORTH BETWEEN

JAPAN ON THE ONE HAND AND PUERTO RICO AND WESTERN EUROPE
ON THE OTHER. THIS SWAPPING DID NOT HAVE THE SLIGHTEST
EFFECT ON THE STANDING OF EITHER BRAZIL OR MEXICO. KISSINGER

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